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**HORNBLOWER CRUISES & EVENTS,  
HORNBLOWER YACHTS, INC.**

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA**

GENRI MIRKADYROV,

Plaintiff,

v.

HORNBLOWER CRUISES & EVENTS,  
HORNBLOWER YACHTS, INC., M/V LORD  
HORNBLOWER, her engines, apparel and  
furniture,

Defendants.

Case No.: CV 09-1917 MMA NLS

**DEFENDANTS HORNBLOWER  
CRUISES AND EVENTS AND  
HORNBLOWER YACHTS, INC.'S  
ANSWER TO PLAINTIFF'S  
COMPLAINT FOR PERSONAL  
INJURIES**

**(DEMAND FOR JURY TRIAL)**

Defendants Hornblower Cruises & Events, Hornblower Yachts, Inc. ("Defendants")  
hereby answers Plaintiff's Complaint for Damages for Personal Injuries Under the Jones  
Act and General Maritime Law as follows:

1. Defendants admit that the plaintiff is a seaman and that this Court has jurisdiction.  
Other than as specifically admitted herein, Defendants deny every other allegation  
herein.

**FIRST CLAIM FOR RELIEF  
(UNSEAWORTHINESS)**

2. Defendants incorporate herein its responses to Paragraph 1, inclusive, of the Complaint.
3. Defendants admit the allegations in Paragraph 3 of the Complaint.

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4. Defendants admit the allegations in Paragraph 4 of the Complaint.
5. Defendants admit the allegations in Paragraph 5 of the Complaint.
6. Defendants admit to the allegations in Paragraph 6 of the Complaint.
7. Paragraph 7 of the Complaint contains no charging allegations with regard to Defendants, and therefore requires no answer.
8. Defendants admit that plaintiff was a member of the crew of the M/V LORD HORNBLOWER. Other than as specifically admitted, Defendants deny the remainder of the allegations in Paragraph 8.
9. Defendants deny the allegations in Paragraph 9 of the Complaint.
10. Defendants deny the allegations in Paragraph 10 of the Complaint.
11. Defendants deny the allegations in Paragraph 11 of the Complaint.
12. Defendants deny the allegations in Paragraph 12 of the Complaint.
13. Defendants deny the allegations in Paragraph 13 of the Complaint.

**SECOND CLAIM FOR RELIEF**  
**(NEGLIGENCE)**

14. As to Paragraph 14, Defendants incorporate herein its responses to Paragraphs 1-13.
15. Defendants deny the allegations in Paragraph 15 of the Complaint.
16. Defendants deny the allegations in Paragraph 16 of the Complaint.
17. Defendants deny the allegations in Paragraph 17 of the Complaint.
18. Defendants deny the allegations in Paragraph 18 of the Complaint.
19. Defendants deny the allegations in Paragraph 19 of the Complaint.

**THIRD CLAIM FOR RELIEF**  
**(MAINTENANCE AND CURE)**

20. As to Paragraph 20, Defendants incorporate herein its responses to Paragraphs 1-19.
21. Defendants admit the allegations in Paragraph 21 of the Complaint.
22. Defendants deny the allegations in Paragraph 22 of the Complaint.
23. Defendants deny the allegations in Paragraph 23 of the Complaint.
24. Defendants deny the allegations in Paragraph 24 of the Complaint.

Defendants hereby assert the following defenses.

**FIRST AFFIRMATIVE DEFENSE*****(Failure to State a Cause of Action)***

AS A SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE, Defendants allege that neither Plaintiff's Complaint, nor any of the alleged causes of action therein, state facts sufficient to constitute a cause of action against the answering Defendants.

**SECOND AFFIRMATIVE DEFENSE*****(Contributory Negligence)***

AS A SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE, Defendants allege that Plaintiff was negligent in and about the matters alleged in the Complaint and in each cause of action therein, and that such negligence contributed directly and proximately to the accident and damages, if any, alleged therein.

**THIRD AFFIRMATIVE DEFENSE*****(Comparative Negligence)***

AS A SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE, Defendants allege that the injuries and damages complained of by Plaintiff, if any there were, were directly and proximately caused, either wholly or in part, by the negligence of persons or entities other than Defendants, and that such negligence is either imputed to Plaintiff by reason of the relationship between Plaintiff and such persons or entities, or comparatively reduces the proportion of negligence and corresponding liability of Defendants.

**FOURTH AFFIRMATIVE DEFENSE*****(Failure to Mitigate Damages)***

AS A SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE, Defendants allege that Plaintiff has unreasonably failed to act in such a manner as to mitigate the damages of which he complains, if any there were.

**FIFTH AFFIRMATIVE DEFENSE*****(Liability for Non-Economic Damages)***

AS A SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE, Defendants allege that if Defendants are ultimately found to have been negligent in this case, which

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supposition is denied and merely stated for the purpose of this affirmative defense, its liability, if any, for Plaintiff's non-economic damages shall be several, pursuant to the Fair Responsibility Act of 1986 (proposition 51), including but not limited to California Civil Code §1430 et seq., so that Defendants shall be liable only for the amount of non-economic damages allocated to Defendants in direct proportion to Defendants' percentage of fault, if any, and a separate judgment, if any, shall be rendered against Defendants for that amount.

### **SIXTH AFFIRMATIVE DEFENSE**

#### ***(Primary Duty Rule)***

AS A SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE, Defendants allege that its liability should be reduced or eliminated pursuant to Plaintiff's breach of one or more duties under the General Maritime Law, including but not limited to the primary duty rule or the Walker doctrine. Specifically, Defendants allege that the claimed unseaworthy condition, if any, was due wholly and solely to a failure on Plaintiff's part to perform the duties that were assigned to him.

#### **REQUESTED RELIEF:**

WHEREFORE, Defendants hereby requests that: (1) Plaintiff take nothing by reason of the Complaint; (2) the Complaint and each cause of action alleged therein be dismissed with prejudice and at Plaintiff's cost; (3) judgment entered in favor of Defendants, including costs of suit; and (4) such other and further relief as the Court deems just and proper.

Dated: September 29, 2009

By: s/Galin G. Luk

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**ENDORSEMENT**

BY WAY OF ENDORSEMENT TO THIS ANSWER, DEFENDANTS DEMAND A  
JURY TRIAL PURSUANT TO FEDERAL RULES OF CIVIL PROCEDURE 38.

Dated: September 29, 2009

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